



Montana Rail Link, Inc.  
101 International Drive  
Post Office Box 16390  
Missoula, Montana  
USA 59808

(406) 523-1500  
(406) 523-1493 fax  
www.montanarail.com

January 15, 2014

U.S. Environmental Protection Agency  
Region 8  
Attention: Sharon Abendschan (Ref: 8ENF-RC)  
1595 Wynkoop Street  
Denver, CO 80202-1129

**Re: Request for Information Pursuant to Section 104(e) of CERCLA  
Smurfit-Stone Mill Site in Missoula County, Montana, SSID A804**

Dear Ms. Abendschan:

I am writing regarding the above-described request for information for the Smurfit-Stone Mill Site located in Missoula County, Montana. Specifically, this letter is intended to address the confidentiality of that certain Agreement Made Between Burlington Northern Railroad Company and Montana Rail Link, Inc. ("MRL") dated July 21, 1987 (the "Master Agreement").

Since execution of the Master Agreement, MRL has not disclosed the Master Agreement in its entirety to any unrelated third party. Unless compelled to do so by a court of competent jurisdiction, MRL, as a corporate policy, does not disclose the Master Agreement in its entirety to any unrelated third party. Occasionally, unrelated third parties may request certain portions of the Master Agreement, but such portions are provided only in the event such a third party executes a confidentiality agreement and has satisfied the threshold requirements for disclosure.

The Master Agreement is not available publicly in any form (hard copy or electronic) and internal access to the Master Agreement is limited to those MRL employees and consultants that, based upon job function, have a need to view its contents.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. J. Walsh'.

Thomas J. Walsh  
President  
Montana Rail Link, Inc.

C: Karl M. Swanson



Ref: 8ENF-RC

**Response of Montana Rail Link, Inc. to EPA Request for Information**

**Smurfit-Stone SSID A804**

All numbered responses provided herein correspond to the same number in the EPA's Request for Information that Montana Rail Link, Inc. ("MRL") received on December 17, 2013. "Site" was not defined by EPA in "Enclosure 2, Definitions and Information" that accompanied EPA's Request for Information. MRL's answers to the questions are therefore based upon its general understanding of the area formerly occupied by the Smurfit-Stone plant. Number 4 on the Request for Information contained instructions for MRL as Respondent to the Request for Information and therefore no response to number 4 is provided.

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Montana Rail Link, Inc.  
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Randy Gustin, Chief Engineer  
Montana Rail Link, Inc.  
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Joe Gentri, Manager of Real Estate  
Montana Rail Link, Inc.  
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Mark Smith, Superintendent of Operations  
Montana Rail Link, Inc.  
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Karl Swanson, EVP and General Counsel  
Washington Corporations  
P.O. Box 16630, 101 International Drive  
Missoula, MT 59808  
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Phone: (406) 523-1312

Ms. Rebecca Summerville  
Datsopoulos, McDonald and Lind  
201 W Main St #201,  
Missoula, MT 59802  
Fax: (406) 543-0134  
Phone: (406) 728-0810

2. Tom Walsh, President  
Montana Rail Link  
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Missoula, MT 59808  
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Mr. Walsh has knowledge regarding all the answers given for the all of the remaining questions.

3. All of the persons identified above were consulted in the preparation of MRL's response.
5. The sole agreement between MRL and Burlington Northern Railroad Co. ("BN") related in any way to the Site is contained in a 1987 agreement BN and MRL ("Agreement"). Pursuant to the terms of the Agreement and the Interstate Commerce Act, and for the purpose of providing rail transportation services, MRL leased and acquired rights over certain operating rail lines in Montana, Idaho and Washington from BN. While the Agreement provides for both the sale and lease of properties across a multi-state region, the track that services the plant at the Site is used by MRL. MRL did not acquire ownership or a leasehold interest in any property at the Site pursuant to the terms of the Agreement or any other agreement or conveyance. The Agreement has been maintained by MRL and BN (and its successors) as confidential, and information in the Agreement has not been made public. MRL is providing a copy of the

Agreement, marked "CONFIDENTIAL", with this response and requests that EPA maintain the Agreement as Confidential Business Information.

The obligations and rights of BN under the terms of the Agreement have, through a series of acquisitions and reorganizations, become vested in BNSF Railway Co., Inc. ("BNSF"). The Agreement is the document that dictates the rights and obligations of BNSF and MRL with regard to rail service within the area served by MRL.

6. MRL has provided common-carrier rail service to and from the plant area since the effective date of the Agreement. This service included moving inbound supplies to the plant area as requested by the operator and moving outbound product from the plant area. All switching of railcars within the plant area was completed by the operator of the plant.
  - a. MRL has never acquired an ownership interest in any of the Site.
  - b. As mentioned above, MRL has never acquired an ownership interest in any of the Site.
  - c. MRL acted as a common carrier of products that were transported by rail. At the request of the operator, MRL served Smurfit-Stone and a predecessor in interest ("Stone Container, Inc.") by delivering loaded and empty railcars to, and picking up loaded railcars from, the plant area. Since Smurfit-Stone has ceased operating a paper plant at the Site and upon the transfer of the Site, MRL has served the present owner of the Site, M2 Green Redevelopment LLC ("M2Green"), as a common carrier, transporting scrap and machinery from the Site to destinations selected by M2Green. Attached are the Operating Agreements that governed the provision of common-carrier service to the plant during the time it operated as a paper plant and to M2Green for its operations.
  - d. Although Smurfit-Stone and Stone Container, Inc. primarily relied upon other contractors, selected by them, to provide track maintenance on the track located within the plant area, upon occasion they retained MRL to provide minor track repair and maintenance. This work was done pursuant to Purchase Orders issued by Smurfit-Stone and Stone Container, Inc.. MRL did not make any changes at the Site.
  - e. MRL has not undertaken any different activities since Smurfit-Stone ceased operations at the Site. MRL has supplied the new owner of the Site, M2Green, with the same common-carrier services that MRL supplied to Smurfit-Stone. All rail transportation has been outbound since the site has been transferred to the new owner.
  - f. MRL has never owned or transferred any portion of the Site.
7. MRL has no information regarding the environmental conditions of the Site other than the information that is publicly available.

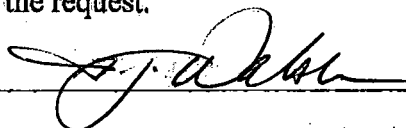
8. MRL conducted no activities at the Site which resulted in the generation of waste materials.
9. As a common carrier, MRL is subject to oversight by the Surface Transportation Board. It was not issued any permits by State or Federal agencies to act as a common carrier for the Site. The Agreement was approved by the ICC, predecessor to the Surface Transportation Board.
10. MRL has not hired any companies or individuals to perform work at the Site.
11. MRL has no reason to believe that there are persons who could provide a more-detailed response to the questions posed in the Request for Information.

## NOTARIZED CERTIFICATE

I, Thomas J. Walsh, having been duly sworn and being of legal age, hereby state:

1. I am the person authorized by Montana Rail Link, Inc. to respond to the Environmental Protection Agency's (EPA's) request for information concerning the Smurfit-Stone Mill Site located near Missoula, Montana.
2. I have made a complete and thorough review of all documents, information, and sources relevant to the request.
3. I hereby certify that the attached response to EPA's request is complete and contains all information and documents responsive to the request.

(Signature)



(Name)

Thomas J. Walsh

(Title)

President

(SEAL)

Subscribed and sworn to me

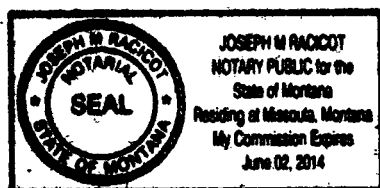
This 16<sup>th</sup> day of JANUARY, 2014.

  
Notary Public

My Commission Expires JUNE 2, 2014

My address is 101 INTERNATIONAL DRIVE

MISSOULA, MT 59808



**INDUSTRY TRACK AGREEMENT No. 400,318**  
**SP Schilling**

THIS INDUSTRY TRACK AGREEMENT ("Agreement") made as of this 1st day of November, 2011, ("Effective Date") by and between **MONTANA RAIL LINK, INC.**, a Montana corporation ("Railroad"), whose mailing address is Attention Real Estate, P.O. Box 16624, Missoula, MT 59808-6624 and physical address is 101 International Way, Missoula, Montana 59808 and

whose mailing address is  
**M2 GREEN REDEVELOPMENT ("Industry")**  
601 E THIRD STREET SUITE 302  
PO BOX 249  
ALTON, IL 62002

**RECITALS**

1. WHEREAS, Industry desires that Railroad: (i) maintain and operate over certain rail, ties, ballast, and appurtenances thereto owned and/or operated by Railroad ("Railroad Track"); and (ii) operate over certain additional track ("Industry Track"), (Railroad Track and Industry Track collectively, together with all appurtenances, called "Track"), located in the City of Schilling, County of Missoula, State of Montana at approximately Milepost 132.05, to serve a facility operated by Industry ("Plant"), and Railroad desires to provide such service, subject to the terms of this Agreement.
2. WHEREAS, notwithstanding any other provision contained herein, this Agreement shall be contingent upon Railroad providing Industry with Exhibit A, as referenced above, within thirty (30) days of Industry's execution of this Agreement ("Execution Period"). In the event Railroad fails to provide Industry with a finalized Exhibit A within the Execution Period, this Agreement shall be considered null and void and neither party shall have any obligation to the other as it pertains to this Agreement. Both Railroad and Industry agree that upon Railroad's provision of an acceptable Exhibit A, this Agreement shall be considered fully executed and enforceable against the parties.

**AGREEMENTS**

NOW THEREFORE, in consideration of the mutual covenants contained herein, Railroad and Industry agree as follows:

1. **CONTROL OF RAILROAD TRACK AND OWNERSHIP OF INDUSTRY TRACK.** Railroad shall control the Railroad Track pursuant to the terms and conditions of the Master Lease entered into by Railroad and BNSF Railway Company ("BNSF"). Industry shall own the Industry Track.
2. **MAINTENANCE AND OPERATION.**
  - a. If Industry has not already done so, Industry shall be responsible for obtaining, without expense to Railroad, all necessary real property rights and public authority and permission, including applicable permits, for the maintenance and operation of the Industry Track. Industry shall strictly comply with all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction, including, without limitation, those pertaining to environmental matters (collectively, "Legal Requirements") and other Railroad requirements relating to the use of the Track, Facilities or Equipment, defined below.
  - b. Railroad shall, for the accommodation of and at the sole risk and expense of Industry, maintain the Railroad Track. Industry shall at all times, and at its sole risk and expense, maintain, or cause to be maintained, the Industry Track and all Plant and Equipment (if any) in a safe and satisfactory condition and in compliance with all applicable Legal Requirements (defined below). Maintenance means, among other things, providing proper drainage along the relevant portion of the Track, keeping the Track free and clear of snow, ice, vegetation, structures, and other obstacles, maintaining grade crossing warning devices, passive warning signs, gates, fences, barriers, roadways, track drainage facilities, lighting and track and other signals. Without relieving Industry from any of its obligations under this Agreement,

Railroad may refuse to operate over the Industry Track or use or enter the Plant or contact the Equipment whenever Railroad, in its sole discretion, determines that the same is unsatisfactory for Railroad's operation, entry or contact. If and when Industry has remedied such condition to Railroad's sole satisfaction, Railroad shall resume operation over the Industry Track or use of or entry into the Plant or contact with the Equipment. Railroad's operation over the Track or use of or entry into any Facility or contact with any Equipment with knowledge of an unsatisfactory condition is not a waiver of Industry's obligations contained herein or of Railroad's right to recover for or be indemnified and defended against such damages to property or injury to or death of persons that may result therefrom.

- c. Industry shall, at its sole expense, pay all costs for changes, repairs or alterations to the Industry Track that may be necessary to conform to any changes of grade or relocation of the Railroad Track at the point of connection with the Industry Track, if such change of grade or relocation is required to comply with any Legal Requirement or is made for any other reason beyond Railroad's reasonable control.
- d. If Industry installs any gates or fencing across the Track, or a track scale, unloading pit, loading or unloading device, adjustable loading dock, warehouse door, or any other structure (collectively, "Facilities") affecting the Track, Industry shall be solely responsible for assuring the safe and satisfactory condition of the same and shall not allow any Facilities to be a source of danger to the safe operation of the Track. Industry shall also be solely responsible for assuring the safe and satisfactory condition of all of Industry's equipment touching, used in conjunction with or affecting the Track ("Equipment") and shall not allow any Equipment to be source of danger to the safe operation of the Track. Before utilizing or unloading any equipment spotted onto the Track, Industry shall inspect the same and all other Equipment and Facilities for the safety of persons working on or about these items to assure compliance with the foregoing. Industry shall utilize all Facilities, Equipment and spotted equipment so as not to affect negatively the safe and efficient operation over the Track. Industry shall, among other things: keep any gates across the Track open whenever necessary, in Railroad's sole judgment, to enable Railroad to safely and efficiently operate over the Track; keep unloading pits securely covered when not in actual use and at all times when the Track is being switched by Railroad; keep all doors firmly secured; and keep adjustable loading docks at warehouses securely fastened in an upright position when not in actual use and at all times when the Track is being switched by Railroad.
- e. Railroad may require for safety purposes that Industry, at its sole cost and expense, provide flagmen, lights, traffic control devices, automatic warning devices, or any such safety measure that Railroad deems appropriate in connection with Industry's use of the Track. Industry shall reimburse Railroad within thirty (30) days of receipt of bill rendered therefor for all costs expended by Railroad, including but not limited to the furnishing of flagmen and any vehicle rental costs incurred. The cost of flagger services provided by Railroad, when deemed necessary by Railroad's representative, will be borne by Industry. Railroad's flagging rate in effect at the time necessitated by Industry will be used to calculate the actual costs of flagging pursuant to this paragraph.
- f. In the event the public authority having jurisdiction orders the separation of the grade of the Track and any street, road, highway, other rail line or the like, Industry hereby consents to the removal and/or relocation of the Track and shall reimburse Railroad all expenses in connection with the removal and/or relocation of the Track.
- g. Industry shall not place, permit to be placed, or allow to remain, any permanent or temporary material, structure, pole, container, storage vessel, above-ground or underground tank, or other obstruction within 8½ feet laterally from the center (nine and one-half (9-1/2) feet on either side of the centerline of curved Track) or within 23 feet vertically from the top of the rail of said Track ("Minimal Clearances"), provided that if any Legal Requirement requires greater clearances than those provided for in this Section 2.g., then Industry shall strictly comply with such Legal Requirement. Industry shall not place or allow to be placed any freight car within 250 feet of either side of any at-grade crossings on the Track. Railroad's operation over the Track with knowledge of an unauthorized reduced clearance will not be a waiver of the covenants of Industry contained in this Section 2.g. or of Railroad's right to recover and be indemnified and defended against such damages to property, or injury to or death of persons that may result therefrom.
- h. Industry shall be responsible for all cost associated with any derailment that occurs as a result of Industry's failure to maintain Industry Track. Industry shall further be responsible for all costs associated with any derailment that occurs as a result of Industry's negligent, reckless or willful acts or omissions, whether or not such derailment takes place on Industry-controlled track.

3. **TERM.** Unless earlier terminated as provided herein, this Agreement will be in force for the term of ONE YEAR from its date and will automatically renew for successive terms of one year each thereafter unless terminated by either party.

4. **INDEMNITY.**

a. For purposes of this Agreement:

- i. "Indemnitees" means Railroad, and its affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees and agents and BNSF Railway Company and its affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees and agents;
- ii. "Liabilities" means, to the fullest extent enforceable by law, all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments and expenses (including, without limitation, court costs, attorneys' fees and costs of investigation, removal and remediation and governmental oversight costs) environmental or otherwise and
- iii. "Industry Parties" means Industry or Industry's officers, agents, invitees, licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.

b. Industry shall, to the fullest extent of the law, release, indemnify, defend, and hold the Indemnitees harmless for, from and against any Liabilities, including attorneys fees, caused in whole or in part by the negligence of Industry Parties, and arising out of or related to (in whole or in part) any claim that by virtue of the use of the Track which is the subject of this Agreement, under CERCLA or other environmental laws that Railroad is (i) an "owner", "operator", "arranger" or "transporter" of the Industry Track or the plant, or (ii) other than a common carrier with respect to the Track.

c. If any employee of any Industry Party claims he or she is an employee of any Indemnitee, Industry shall, to the fullest extent of the law, indemnify and hold the Indemnitees harmless from and against any Liabilities, including attorneys fees, arising out of or related to (in whole or in part) any such claim including, but not limited to, claims related to proceedings under or related to the Federal Employers' Liability Act, the Safety Appliance Act, the Boiler Inspection Act, the Occupational Health and Safety Act, the Resource Conservation and Recovery Act, and any similar state or federal statute.

d. Upon written notice from any Indemnitee, Industry agrees to assume the defense of any lawsuit or other proceeding brought against such Indemnitee by any entity, relating to any matter covered by this Agreement for which Industry has an obligation to assume liability for and/or save and hold harmless such Indemnitee. Industry shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

5. **INSURANCE.** Industry shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

a. **Commercial General Liability Insurance.** This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$1,000,000 each occurrence and an aggregate limit of at least \$2,000,000. Coverage must be provided on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited to, Bodily Injury and Property Damage as well as Products and Completed Operations. The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property. With respect to any claim against Railroad, coverage shall be provided for claims for bodily injury asserted by an employee of an additional insured, and any Employer Liability Exclusion which may otherwise operate to exclude such coverage, shall be voided in this respect.

b. **Workers' Compensation and Employers' Liability Insurance.** This insurance shall include coverage for, but not limited to:

- i. Industry's statutory liability under the worker's compensation laws of the state(s) in which the track is located. If optional under State law, the insurance must cover all employees.
- ii. Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

- c. **Business Automobile Insurance.** This insurance shall have limits of \$1,000,000 and shall include coverage for, but not limited to, the following:
- i. Owned autos;
  - ii. Non-owned autos;
  - iii. Hired autos.
- d. In addition, Industry shall comply with the following additional requirements with respect to such insurance:
- i. Any insurance policy shall be written by a reputable Insurance company with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the track is located. If any portion Industry's operations is to be subcontracted by Industry, Industry shall require that any and all subcontractors provide and maintain insurance coverage as set forth herein.
  - ii. Prior to Railroad commencing operations governed by this Agreement, Industry shall furnish to Railroad an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the policy number if available. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing at least 30 days prior to any cancellation or non-renewal with such provision indicated on the certificate of insurance. In the event of a claim or lawsuit involving Railroad or BNSF arising out of this Agreement, Industry will make available any required policy covering such claim or lawsuit.
  - iii. All policies required above (excluding Worker's Compensation) shall name the Railroad as an additional insured with respect to Industry's obligations under this Agreement. Industry shall furnish Railroad a certificate of insurance evidencing Railroad's status as an additional insured.
  - iv. All policies required above (excluding Worker's Compensation Insurance) shall be on a primary and noncontributory basis and shall not be limited by the absence of negligence or alleged negligence against Industry. Industry shall waive all rights of subrogation against Railroad.
  - v. Failure to provide evidence as required by this Section 5 shall entitle, but not require, Railroad to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this Section 5 shall not operate as a waiver of Industry's obligations hereunder. The fact that insurance (including, without limitation, self-insurance) is obtained by Industry shall not be deemed to release or diminish the liability of Industry including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad shall not be limited by the amount of the required insurance coverage.
- e. These are the minimum limit requirements of Railroad. Industry's obligation under this section is not limited to this minimum amount. Furthermore, these are minimum limit requirements at the date this Agreement is executed. Higher limits may be required in the future as reasonably determined from time to time by Railroad for Agreements similar in nature to this Agreement.
6. **DEFINITION OF COST AND EXPENSE.** For the purpose of this Agreement, "cost" or "costs" "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used. In the event that Industry shall fail to pay any monies due to Railroad within thirty (30) days after the invoice date, then Industry shall pay interest on such unpaid sum from such due date until paid at an annual rate equal to the lesser of (i) the prime rate last published in The Wall Street Journal in the preceding December plus two and one-half percent (2 1/2%), or (ii) the maximum rate permitted by law.
7. **RIGHT OF RAILROAD TO CONSTRUCT FUTURE FACILITIES.** Railroad retains the right, without liability to Industry or any other party, to construct or allow to be constructed upon its property other facilities, and to use its owned or leased property in any manner, provided Railroad and BNSF use all commercially reasonable efforts to avoid material interference with the use of Industry's Track as described herein.
8. **PUBLIC ASSESSMENTS.** Industry shall timely pay all compensation, assessments and levies required at any time by any public authority, entity, or person for the privilege of maintaining and operating Industry's Track, and shall not cause or permit any liens to be filed against the Railroad Track or any Railroad property. In the event any such liens are filed, Industry shall cause such liens to be released within fifteen (15) days.



**9. NOTIFICATION REQUIREMENTS.**

- a. Industry shall give immediate notice to Railroad's Manager of Environmental Projects at (406) 523-1415 of any release of hazardous substances on or from the Track, and to Railroad's Manager of Real Estate Administration at (406) 523-1500, promptly in writing, for any violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Industry's use of the Track. Industry shall use the best efforts to promptly respond to any release caused by Industry. Industry shall also give Railroad's Manager of Environmental Projects, Railroad's Real Estate Department, promptly, in writing, notice of all measures undertaken on behalf of Industry to investigate, remediate, respond to or otherwise cure such release or violation, and shall provide to Railroad's Manager of Environmental Projects, Railroad's Real Estate Department, copies of all reports and/or data regarding any investigations or remediations of the Track or the surrounding right of way.
- b. In the event that Railroad has notice from Industry or otherwise of a release or violation of Environmental Laws on the Track which occurred or may have occurred during the term of this Agreement, Railroad may require Industry, at Industry's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such releases or violations affecting the Track and/or Railroad's property.
- c. Industry shall promptly report to Railroad in writing any conditions or activities upon the Track which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Industry's reporting to Railroad shall not relieve Industry of any obligation whatsoever imposed on it by this Agreement. Industry shall promptly respond to Railroad's request for information regarding said conditions or activities.

**10. DEFAULT.** The following events shall constitute defaults hereunder:

- a. Creating or allowing to remain any condition, including without limitation, any environmental condition, on or about the Track, which in the sole judgment of Railroad interferes with or endangers the operations of Railroad;
- b. Assignment or transfer by operation of law of Industry's rights or obligations under this Agreement;
- c. The placing of this Agreement in the public record.
- d. Defaults on any of the covenants or agreements of Industry contained in this document.

**11. TERMINATION.**

- a. Notwithstanding any requirement herein, it is further agreed that either Party may terminate this Agreement at any time upon giving the other Party not less than ninety (90) days written notice prior to the end of the term then in effect.
- b. In addition to all other remedies available at law or in equity, Railroad may, without incurring any liability to Industry, terminate this Agreement and discontinue the maintenance and operation of the Track and remove the Railroad Track, in the event of any of the following events:
  - i. any default as described in Sections 10.a. or b. occurs;
  - ii. any default as described in Section 10.c. occurs and persists for 60 days following written notice from Railroad;
  - iii. Industry fails to utilize rail service from Railroad to or from the Plant for a period of eight (8) months in any period of twelve (12) months;
  - iv. Railroad is authorized by competent public authority to abandon its line to which said Track is connected; or
  - v. Railroad is dispossessed of the right to operate over the Track or its connecting track or any part thereof, in which case Railroad may terminate this Agreement effective immediately by written notice to Industry.
- b. Upon the expiration or earlier termination of this Agreement as provided herein, Railroad at its sole discretion shall have the right to: (i) require Industry to transfer title to that portion of the Industry Track

located upon Railroad's property, and any Facilities or improvements located upon, over, or under Railroad's property to Railroad. Upon such transfer, Railroad shall pay Industry the salvage value of the same; or (ii) require Industry to remove, at its sole cost and expense, that portion of the Industry Track located upon Railroad's property and any Facilities, Equipment or improvements upon, over, or under such property and restore Railroad's property to substantially the state in which it was on the Effective Date of this Agreement. In the event Railroad elects option (ii) and Industry fails within thirty (30) days after the date of such termination to make the removal and restoration, then Railroad may do so itself and in such event Industry shall, within thirty (30) days after receipt of a bill therefore, reimburse Railroad for any costs incurred.

- c. Industry hereby agrees to waive and release all claims, rights, and causes of action that Industry has or may have against Railroad because of the discontinuance of operation and removal of the Railroad Track as provided in this Section 11.

- 12. **ASSIGNMENT.** This Agreement will inure to the benefit of and be binding upon the successors and assigns of the parties hereto; provided, however, that Industry may not assign this Agreement without the prior written consent of Railroad, which may be withheld in Railroad's sole discretion.

- 13. **NOTICES.** Any notice required or permitted to be given hereunder must be in writing and the same shall be given and will be deemed to have been given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address herein above or hereinafter set forth, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice. The address for such notice shall be the address shown above, which may be changed by written notice to the other party at the address shown above.

- 14. **SURVIVAL.** Neither termination nor expiration will release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, provided Railroad does not elect option 11.b.i., the date when the Track, Facilities, Equipment and improvements are removed and the right-of-way is restored to its condition as of the Effective Date.

15. **MISCELLANEOUS.**

- a. The Parties warrant and represent that the Party signing this Agreement on behalf of each has authority to enter into this Agreement and to themselves be bound respectively, to the terms, covenants and conditions contained herein. Each Party shall deliver to the other, upon request, all documents reasonably requested by the other evidencing such authority, including a copy of any corporate or partnership resolutions, consents or minutes reflecting the authority of persons or Parties to enter into agreements on behalf of such Party.
- b. This Agreement shall not be placed of public record.
- c. To the maximum extent possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is prohibited by, or held to be invalid under, applicable law, such provision will be ineffective solely to the extent of such prohibition or invalidity, and this will not invalidate the remainder of such provision or any other provision of this Agreement. All questions concerning the interpretation or application of provisions of this Agreement must be decided according to the laws of the State of Montana.
- d. This Agreement is the full and complete agreement between Railroad and Industry with respect to all matters relating to the maintenance and operation of the Track and supersedes all other agreements between the parties hereto relating to the maintenance and operation of the Track. However, nothing herein is intended to terminate any surviving obligation of Industry or Industry's obligation to defend and hold Railroad and BNSF harmless in any prior written agreement between the parties.
- e. In the event that the Industry consists of two or more parties, all covenants and agreements of Industry herein contained shall be the joint and several covenants and agreements of such parties.

- f. The waiver by Railroad of the breach of any provision herein by Industry shall in no way impair the right of Railroad to enforce that provision for any subsequent breach thereof. All remedies provided hereunder are cumulative and are in addition to all other remedies available at law or in equity.
- g. This Agreement is also made for the benefit of such other railroads that, either by agreement with Railroad or order of competent public authority, have the right to use the Track, all of which railroads shall be deemed "Railroad" under this Agreement.

Executed by the parties to be effective as of the Effective Date set forth above.

**RAILROAD:**

Montana Rail Link, Inc., a Montana corporation

By: [Signature]

Printed Name: David R Koerner

Title: VP and CFO

**INDUSTRY:**

M2 Green Redevelopment, LLC

By: [Signature]

Printed Name: Raymond S. Stillwell

Title: Manager/Member

SUPPLEMENT TO INDUSTRY TRACK AGREEMENT No. 400,318  
SPSCHILLING

BY MUTUAL AGREEMENT, Industry Track Agreement Lease No. 400,318 issued to M2 Green Redevelopment, LLC ("Industry") by MONTANA RAIL LINK, INC. ("Railroad") in the City of Schilling, County of Missoula, State of Montana at Milepost 132.06, Survey Station n/a, under Lease No. 400,318 dated November 1, 2011 is hereby amended to read as follows:

Industry desires that Railroad: (i) maintain and operate over certain rail, ties, ballast, and appurtenances thereto and operated by Railroad shown as the line marked blue, Letters "A" to "B" and Letters "A" to "C" on Exhibit "A" dated November 15, 2011 ("Railroad-Controlled Track"); and (ii) operate over certain additional track shown as the line marked red, Letters "D" to "E" and Letters "B" to "F" on Exhibit "A" ("Industry-Controlled Track"), (Railroad-Controlled Track and Industry-Controlled Track collectively, together with all appurtenances, called "Track"), to serve a facility operated by Industry ("Plant"), and Railroad desires to provide such service and fulfill its common carrier obligation subject to the terms of this Agreement.

All other terms and conditions of said lease shall remain in full force and effect.

It is understood and agreed that this agreement shall not be placed on public record.

IN WITNESS WHEREOF, the parties have executed this agreement as of this 21st day of November, 2011.

MONTANA RAIL LINK, INC.

By: [Signature]

Printed Name: David R. Koerner

Title: VP and CFO

LESSEE:

M2 GREEN REDEVELOPMENT, LLC

By: [Signature]

Printed Name: MARK SPIZZO

Title: MEMBER/MANAGER







MATCH LINE PAGE 3

MATCH LINE PAGE 2

THIS EXHIBIT IS NOT TO BE USED  
IN CONJUNCTION WITH A DEED FOR  
LAND CONVEYANCE

Verify approx. scale!

This should be  
one inch (1") on  
paper

46°57'37.42"N

Image © 2011 DigitalGlobe

TO M2 GREEN

SPUR TRACK

EXHIBIT "A"



**Montana Rail Link**

ENGINEERING DEPARTMENT

PLAT SHOWING: INDUSTRIAL TRACK AGREEMENT

FOR: M2 GREEN

SCHILLING MISSOULA MONTANA  
CITY COUNTY STATE

FOURTH 1" = 100'

NOVEMBER 15, 2011 TRACK AGREEMENT

DATE

MATCH LINE PAGE 2  
MATCH LINE PAGE 1  
TO MAIN TRACK



MATCH LINE PAGE 3

TO M2 GREEN-

This should be  
one inch (1") on  
paper



ENGINEERING DEPARTMENT  
PLANNING INDUSTRIAL TRACK AGREEMENT

FOURTH 1" = 100'

NOVEMBER 15, 2013  
DATE

MATCH LINE PAGE 2



MATCH LINE PAGE 5

MATCH LINE PAGE 4

THIS EXHIBIT IS NOT TO BE USED  
IN CONJUNCTION WITH A DEED FOR  
LAND CONVEYANCE

Verify approx. scale!

This should be  
one inch (1") on  
paper

TO W2 GREEN

TO MAIN TRACK

"D"  
CLEARANCE POINT


"C"  
P.S.

MATCH LINE PAGE 4

MATCH LINE PAGE 3

"E"

EXHIBIT "A"

 **Montana Rail Link**

ENGINEERING DEPARTMENT

PLAT SHOWING INDUSTRIAL TRACK AGREEMENT

FORT W2 GREEN

FOOTING: MONTANA

NOVEMBER 15, 2011

TRACK AGREEMENT



THIS EXHIBIT IS NOT TO BE USED  
IN CONJUNCTION WITH A DEED FOR  
LAND CONVEYANCE

Verify approx. scale!

This should be  
one inch (1") on  
paper


"B"

TO M2 GREEN

MATCH LINE PAGE 5

MATCH LINE PAGE 6

EXHIBIT "A"

 **Montana Rail Link**

ENGINEERING DEPARTMENT

PLAT SHOWING: INDUSTRIAL TRACK AGREEMENT

FOR: M2 GREEN

SCHILLING MISSOULA MONTANA

CITY COUNTY STATE

FOURTH 1" = 100'

SUBDIVISION SCALE

NOVEMBER 15, 2011 TRACK AGREEMENT

DATE FILED

MATCH LINE PAGE 5

MATCH LINE PAGE 4







MATCH LINE PAGE 6

MATCH LINE PAGE 7

MATCH LINE PAGE 7


MATCH LINE PAGE 8

TO MAIN TRACK

TO M2 GREEN

THIS EXHIBIT IS NOT TO BE USED  
IN CONNECTION WITH A DEED FOR  
LAND CONVEYANCE

EXHIBIT "A"

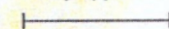
 **Montana Rail Link**

ENGINEERING DEPARTMENT  
PLAT SHOWING: INDUSTRIAL TRACK AGREEMENT

FOR: M2 GREEN

SCHILLING	MISSOULA	MONTANA
CITY	COUNTY	STATE
FOURTH		1" = 100'
SUBDIVISION		SCALE
NOVEMBER 15, 2011		TRACK AGREEMENT
DATE		FILE PAGE 1 OF 3

Verify approx. scale!



This should be  
one inch (1") on  
paper







MATCH LINE PAGE 7  
MATCH LINE PAGE 8

MATCH LINE PAGE 8  
MATCH LINE PAGE 9

TO MAIN TRACK

TO M2 GREEN

THIS EXHIBIT IS NOT TO BE USED  
IN CONJUNCTION WITH A DEED FOR  
LAND CONVEYANCE



Verify approx. scale!



This should be  
one inch (1") on  
paper

# EXHIBIT "A"

 <b>Montana Rail Link</b>		
ENGINEERING DEPARTMENT		
PLAT SHOWING INDUSTRIAL TRAIL AGREEMENT		
FOR: M2 GREEN		
CITY OF	COUNTY OF	STATE OF
FOURTH	MISSOULA	MONTANA
DATE		SCALE
NOVEMBER 15, 2011		1" = 100'
FILE		PAGE 2 OF 8



MATCH LINE PAGE 8  
MATCH LINE PAGE 9

2

TO MAIN TRACK

THIS EXHIBIT IS NOT TO BE USED  
IN CONJUNCTION WITH A DEED FOR  
LAND CONVEYANCE

Verify approx. scale!

This should be  
one inch (1") on  
paper

END OF TRACK

"F"



**Montana Rail Link**

ENGINEERING DEPARTMENT  
PLAYS-HOWING INDUSTRIAL TRACK AGREEMENT

FOR M2 ORLEN

SCHOOLING MISSOURI MONTANA

FOURTH 11-4-100

NOVEMBER 15, 2014 TRACK AGREEMENT



HURLINGTON NORTHERN INC

BURLINGTON NORTHERN INC. DONT NO. BN

### INDUSTRIAL TRACK AGREEMENT (When No New Construction Is Involved)

OFFICE OF SECRETARY  
ST. PAUL, MINNESOTA

Parties

Agreement made this 6th day of April 1971

HOERNER WALDORF DIVISION, CHAMPION INTERNATIONAL CORPORATION  
New York corporation, hereinafter called "Industry," whose filing address for the purpose of this agreement is Drawer D, Missoula, Montana 59801

Location

WHEREAS, Industry desires the continued maintenance and operation of trackage hereinafter called  
track located at Schilling, Montana  
Shown ~~on previous title and base~~ colored solid and dashed blue  
the plat herein attached dated November 6, 1978  
Exhibit "A" and by this reference made a part hereof

NOW THEREFORE the parties hereto agree to the continued maintenance and operation of said Park on the following terms and conditions:

### Right of Way

Section 1. Industry shall first procure without expense to Railroad all necessary right of way and all necessary public authority and permission for the continued maintenance and operation of the track.

Industry further agrees that said track shall be maintained and operated subject to all provisions of any such public authority or permission and, regardless of the fact that same may be granted to Railroad other than to Industry, to assume any and all liability for and to indemnify, defend and save harmless Railroad from and against any and all loss, cost, damage, suit or expense of any manner arising or growing out of the compliance with or violation of the provisions of such public authority or permission.

14. If separation of the grade of said track and of any highway is ordered by public authority, the Industry shall indemnify Railroad against any expense in connection therewith or consent to the removal of the track.

### Maintenance Operation and Ownership

Section 2. Plaintiff will maintain track between the letters colored solid blue  
on Exhibit A at no expense and will maintain track between the letters  
on Exhibit A at expense of industry.

Industry will, at its own expense, maintain track between the letters colored dashed blue  
on Exhibit "A"

on Exhibit "A" and Industry will own the track between the letters colored solid blue  
on Exhibit "A" and Industry will own the track between the letters colored dashed blue  
on Exhibit "A" Connecting track colored solid green on Exhibit "A" is owned and  
will be maintained by others

Industry shall bear and pay any costs for changes or alterations in that portion of track owned by Industry that may be necessary in order to conform to any changes of grade or relocation of the tracks of Railroad at the point of connection with said track required by any law, ordinance or regulation, or necessary because of any other reason beyond Railroad's control.

Industry shall pay to Railroad from time to time the cost of maintenance, additions and betterments performed by Railroad, herein agreed to be borne by Industry, within twenty (20) days after bills are rendered therefor.

Any work performed by Industry in constructing, maintaining the track in any fashion extending over, under or across the same or in making additions and betterments thereto shall be done in a substantial and workmanlike manner and in accordance with Railroad's standards. Work thereon shall be constructed and maintained in accordance with Railroad's requirements, the National Electric Safety Code and any statutory order, rule or regulation of any public authority having jurisdiction. If Industry fails to maintain or to have maintained in accordance with the standards agreed by it to be maintained in, to pay the bills therefor or to complete the work on the time Railroad may refuse to operate over the track.

It is not to be used for the receiving, forwarding or storing of hazardous materials. It is not to be used in violation of any applicable laws, regulations, codes, standards, or the requirements of any state or federal authority having jurisdiction with respect thereto as the same may be modified, supplemented and extended from time to time.

### Definition of Cost

**Section 3. Cost:** For the purpose of this agreement shall be actual direct and indirect costs attributable to the material and supplies shall be charged at current values when used.

### Right of Railroad to Use

**Section 4.** Railroad shall have the right to use, without cost, and free from all taxes, the infrastructure of the business of Railroad in the business of the carrier, including, but not limited to, the use of said track to, include,

### Clearances

Approved as to form  
Asst. Gen. Counsel  
Law Dept. B.N.I.



Allen B. Bissell - 2-83

Should either or both, the lateral and vertical clearance hereinbefore required to be observed be permitted to be reduced by order of competent public authority, Industry hereby agrees to indemnify, hold harmless Railroad from and against any and all claims, demands, expenses, costs and judgments arising or growing out of loss of or damage to property or injury to or death of persons occurring directly or indirectly by reason of or as a result of any such reduced clearance.

Railroad's operations over the track with knowledge of an unauthorized reduced clearance shall not be deemed to be a waiver of the foregoing covenants of Industry contained in this Section 5 or of Railroad's right to recover for such damages to property or injury to or death of persons that may result therefrom.

**Public Assessments**

**Section 6.** Industry shall pay all compensation and assessments required at any time by a municipality, public authority, corporation or person for the privilege of maintaining and operating said track.

**Liability**

**Section 7.** Industry agrees to indemnify and hold harmless Railroad for loss, damage, injury or death from any act or omission of Industry, its employees, or agents, to the person or property of the parties hereto and their employees, and to the person or property of any other person or corporation, while on or near said track, and if any claim or liability shall arise from the joint or concurring negligence of both parties hereto, it shall be borne by them equally.

In the event Industry permits a party or parties, hereinafter called "Permittee", other than Railroad to use said track for receiving, forwarding or storing shipments, Railroad hereby consents to such use, and in such case Industry hereby agrees to indemnify and hold harmless Railroad from and against any and all loss, damage, injury or death, resulting from or arising out of any act or omission of Permittee, its employees or agents, to the person or property of the parties hereto and said Permittee, and to the person or property of any person or corporation while on or near said track.

**Assignment**

**Section 8.** This agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto, however, Industry shall not assign this agreement without the written consent of Railroad, and for any departure in this respect Railroad may terminate this agreement.

**Right to Disconnect Track**

**Section 9.** Railroad shall be privileged to terminate this agreement and discontinue the maintenance and operation of said track, and to remove its ownership, in the event of any of the following contingencies, viz:

(a) Industry ceases for a continuous period of one (1) year the doing of business in an active and substantial way at the industry or establishment served.

(b) Railroad is authorized by competent public authority to abandon its line to which track is connected.

(c) Industry shall fail to keep and perform any obligation or stipulation stated in or resulting under this agreement.

No recourse or claim will exist in favor of or be asserted by Industry because of the discontinuance of operation and removal of the metal and fastenings as provided in this Section of this agreement.

**Removal of Track**

**Section 10.** Railroad agrees, upon discontinuance of the use of the track, to remove from its right of way that part of the track owned by Industry and to pay to Industry the salvage value of the usable material so removed, less cost of recovering it. If the cost of removing or recovering said track exceeds the salvage value thereof, Industry shall pay Railroad the difference.

**Joint Use by Other Railroads**

**Section 11.** This agreement is also made for the benefit of such other railroads which, either by prior understandings or agreements with the Railroad have the right to use the track, or which shall be admitted in the future to the use of the track by Railroad, all of which railroads shall be deemed the "Railroad" within the meaning hereof.

**Section 12.** It is mutually agreed by and between Burlington Northern Inc. and Hoerner Waldorf Division, Champion International Corporation (successor in interest to Hoerner Waldorf Corporation) that the certain agreement dated December 13, 1971 covering the continued maintenance, operation and ownership of industrial trackage at Schilling, Montana, shall be and the same is hereby terminated as of the date hereof; provided, however, that such termination shall not affect or impair any right or obligation of either party to said agreement which accrued prior to said termination date.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed the day and year first above written.

BURLINGTON NORTHERN INC.

By B. Kennedy Vice President

HOERNER WALDORF DIVISION, CHAMPION INTERNATIONAL CORPORATION

By [Signature] Title Vice President



ASSIGNMENT

AGREEMENT, made this 26th day of February, 1986, between BURLINGTON NORTHERN RAILROAD COMPANY, a Delaware corporation (formerly Burlington Northern Inc.), hereinafter called "Railroad", HOERNER WALDORF DIVISION, CHAMPION INTERNATIONAL CORPORATION, hereinafter called "Assignor", STONE BROWN PAPERS, INC., Doing Business As STONE CONTAINER CORPORATION, hereinafter called "Assignee", whose billing address for the purpose of this agreement is 360 North Michigan Avenue, Chicago, Illinois 60601.

WHEREAS, Railroad and Assignor are parties to an industrial track agreement dated April 6, 1979 as supplemented by agreement dated December 16, 1983 providing for the continued maintenance, operation and ownership of industrial trackage at Schilling, Montana, said trackage being located as more particularly described in said agreement; and

WHEREAS, Assignor now desires to sell, assign, transfer and set over its rights under and by virtue of said industrial track agreement dated April 6, 1979 as supplemented by agreement dated December 16, 1983 to Assignee.

NOW THEREFORE, in consideration of the mutual covenants herein contained it is agreed between the parties as follows:

1. For a valuable consideration, the receipt whereof is hereby acknowledged, Assignor hereby sells, assigns, transfers and sets over to Assignee all of Assignor's right, title and interest in and to said trackage and in and under said agreement of April 6, 1979 as supplemented by agreement dated December 16, 1983.

2. Railroad agrees and consents to the transfer of said agreement of April 6, 1979 as supplemented by agreement dated December 16, 1983 and all rights thereunder from Assignor to Assignee.

3. In consideration of said assignment and the consent of the Railroad thereto, Assignee assumes and agrees to perform and be bound by all of the obligations imposed upon Assignor by said agreement of April 6, 1979 as supplemented by agreement dated December 16, 1983.

4. Said agreement of April 6, 1979 as supplemented by agreement dated December 16, 1983 as hereby assigned shall remain in full force and effect in accordance with its terms between Railroad and Assignee.

5. This agreement shall be effective as of the date of Closing Under the Asset Purchase Agreement between Champion International Corporation and Stone Container Corporation dated October 1, 1985.



IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed on  
the day and year first above written.

BURLINGTON NORTHERN RAILROAD COMPANY

BY *CTab*  
General Manager Industrial Trackage

HOERNER WALDORF DIVISION, CHAMPION  
INTERNATIONAL CORPORATION

BY *Ray F. B.*  
Title: *Vice President*

STONE BROWN PAPERS, INC., Doing Business As  
STONE CONTAINER CORPORATION

BY *L. H. H.*  
Title:



10433  
10/5/84

BURLINGTON

DOCS

10433

OFFICE

ST. PAUL, MINN. 55101

SUPPLEMENTAL AGREEMENT, made this 16th day of December, 1983, between BURLINGTON NORTHERN RAILROAD COMPANY (formerly Burlington Northern Inc.), a Delaware corporation, hereinafter called "Railroad", and CHAMPION INTERNATIONAL CORPORATION, hereinafter called "Industry".

WHEREAS, the parties hereto are parties to an industrial track agreement dated April 6, 1979 providing for the construction, maintenance, operation and ownership of certain trackage as SCHILLING, MONTANA, as shown on the print attached thereto, dated November 6, 1978, marked Exhibit "A", and made a part thereof; and

WHEREAS, the aforesaid print dated November 6, 1978 does not show crossing colored red, signals colored green and location of said trackage as the same is now constructed, the location thereof being shown in solid and dashed blue on the print dated March 1, 1983 attached hereto, marked Exhibit "A", and made a part hereof, and it is desired by the parties hereto to substitute said print dated March 1, 1983 for the print dated November 6, 1978 in the aforesaid agreement.

WHEREAS, Section 2 of said April 6, 1979 agreement does not provide for maintenance of crossing and signals as shown on the print dated March 1, 1983 attached hereto, and it is the desire of the parties hereto that Section 2 of said April 6, 1979 agreement be deleted therefrom and the following Section 2 substituted therefor;

Section 2. (a) Railroad will maintain track shown solid blue on Exhibit "A" at its expense and will maintain signals colored green on Exhibit "A" at expense of Industry.

Industry will, at its own expense, maintain track shown in dashed blue and crossing colored red.

Maintenance for the purpose of this agreement shall include responsibility to provide proper drainage and to keep the track free and clear of snow, ice, weeds and other obstacles and debris and to provide a safe workway for Railroad.

(b) Railroad will own the track shown solid blue on Exhibit "A" and Industry will own the track shown dashed blue, crossing colored red and signals colored green on Exhibit "A".

Industry shall bear and pay any costs for changes or alterations in that portion of track owned by Industry that may be necessary in order to conform to any changes of grade or relocation of the tracks of Railroad at the point of connection with said track required by any law, ordinance or regulation or necessary because of any other reason beyond Railroad's control.

Industry shall pay to Railroad from time to time the cost of maintenance, additions and betterments, performed by Railroad, herein agreed to be borne by Industry, within twenty (20) days after bills are rendered therefor.

Any work performed by Industry in constructing or maintaining the track or any facilities extending over, under or across the same or in making additions and betterments thereto shall be done in a substantial and workmanlike manner and in accordance with Railroad's standards. Wire lines shall be constructed and maintained in accordance with Railroad's requirements, the National Electric Safety Code and any statute, order, rule or regulation of any public authority having jurisdiction. If Industry fails to maintain said facilities or that portion of the track herein agreed by it to be maintained or to pay the bills therefor within the prescribed time, Railroad may refuse to operate over the track.

If said track is used for the receiving, forwarding or storing of hazardous commodities, Industry agrees to comply with Railroad's requirements and the requirements of any statute, order, rule or regulation of any public authority having jurisdiction with respect thereto as the same may be modified, supplemented and amended from time to time.



225 11/5/84

(c) Railroad shall, at the sole cost and expense of Industry, furnish necessary labor and materials to maintain said signals and will make from time to time the necessary changes and additions thereto which Railroad deems necessary or as may be required by public authority. In maintaining said signals only the usual customary maintenance and repairs will be performed by Railroad, the same as is done at similar installations at other locations on the line of Railroad. "In the event said signals are partially or wholly destroyed and their replacement value, or cost of repair, cannot be recovered from the persons responsible for such destruction, the cost of repair of the signals, or the cost of installation of new signals, shall be borne by Industry.

The annual maintenance of the signal installation colored green on said Exhibit "A" consists of 10 A.A.R. Units and the 1982 maintenance cost is at a rate of \$112.00 per unit for a total annual maintenance cost of \$1,120.00 for said signal installation.

The annual maintenance cost per A.A.R. Unit shall be, from time to time, adjusted upwards or downwards, as the case may be, in accordance with the Annual Index of Railroad Material Prices, Wage Rates and Supplements Combined, as published by the Association of American Railroads for the Western District (the "Annual Index"). Railroad shall bill Industry annually, on or about July 1, for the current year's cost of maintenance of said signals on the basis of maintenance costs per A.A.R. Unit based on the previous year's Annual Index.

All maintenance, improvements, additions and betterments performed or made by Railroad pursuant to this agreement shall comply with all applicable laws, rules, regulations, orders and statutes of all city, county, state and federal authorities having jurisdiction and shall be done or made in a good and workmanlike manner and shall be fit for the particular purpose intended.

(d) Industry further agrees to indemnify, save harmless and defend Railroad from and against any and all claims, suits, losses, damages or expenses on account of injury to or death of employees of Railroad from any cause whatsoever, while engaged in the maintenance, repair, renewal or removal of said signals, or while making additions or betterments thereto, or changes therein, even though such injury or death may be due wholly or in part to the negligence of the employees of Railroad.

Industry hereby indemnifies and holds harmless Railroad from and against any and all liability for loss of or damage to the property of the parties hereto or of any other persons and from injuries to or death of employees of the parties hereto, or of any other persons, arising or growing out of the operations of its trains at and over said crossing protected by said signals, in the event of the failure of said signals to operate properly. Industry shall indemnify and hold harmless and defend Railroad from and against any claims, suits, losses, damages or expenses for loss of or damage to any and all property to whomsoever belonging, and for injuries to or death of any and all persons caused by the presence of said signals or their failure to operate properly.

NOW THEREFORE, the parties hereto agree that print dated March 1, 1983 hereto attached shall be and is hereby substituted for the print dated November 6, 1978 attached to and made a part of said agreement dated April 6, 1979;

Section 2 of said agreement dated April 6, 1979 is hereby stricken and the new Section 2 herein stated is substituted therefor.

Except as hereby modified, supplemented and amended, said agreement dated April 6, 1979 shall be and remain in full force and effect between the parties hereto in accordance with its terms.




115182

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their officers thereunto duly authorized the day and year first above written.

BURLINGTON NORTHERN RAILROAD COMPANY

By   
Title: General Manager Industrial Trackage

CHAMPION INTERNATIONAL CORPORATION

By   
Title: Howard J. Gidez - Vice President  
Purchasing & Transportation



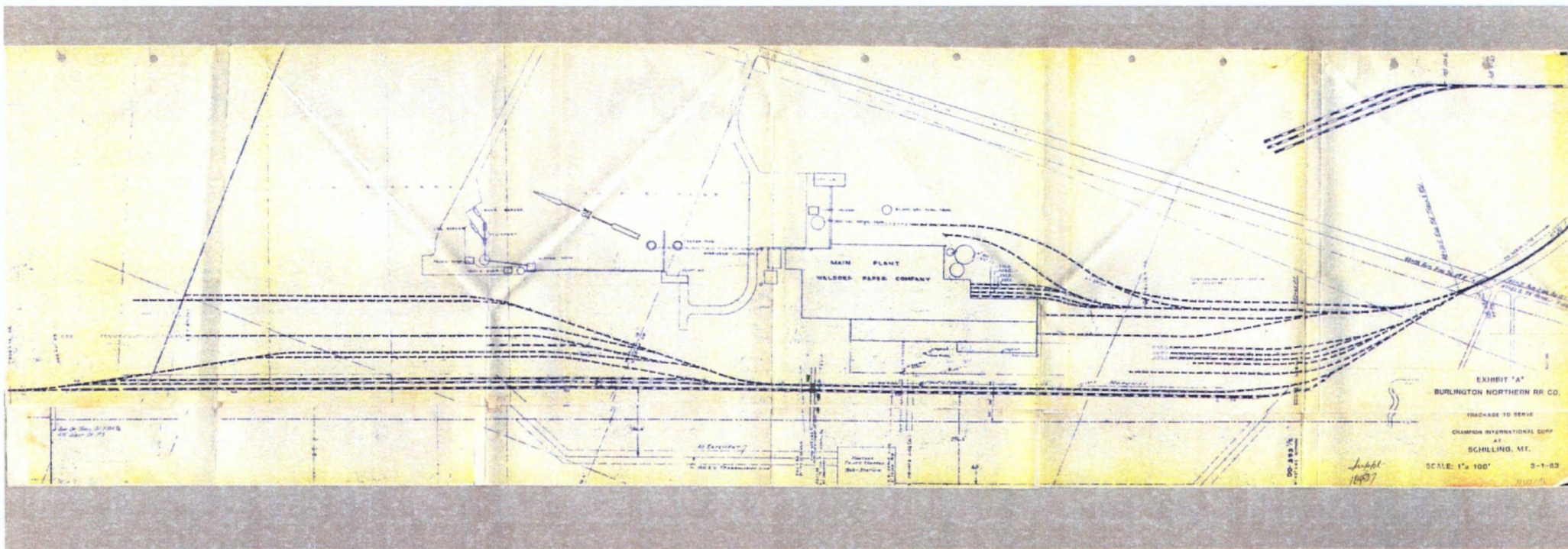


EXHIBIT "A"  
BURLINGTON NORTHERN RR CO.  
TRACKAGE TO SERVE  
CHAMPION INTERNATIONAL CORP  
AT  
SCHILLING, ME.

SCALE: 1"=100' 3-1-83

# BURLINGTON NORTHERN INC.

## INDUSTRIAL TRACK AGREEMENT

BURLINGTON NORTHERN, INC.  
DUCKET NO. BN 10438

OFFICE OF SECRETARY

ST. PAUL, MINNESOTA

Parties

AGREEMENT, made this 3rd day of April, 1979

between BURLINGTON NORTHERN INC., a Delaware corporation, hereinafter called "Railroad", and  
HOERNER WALDORF DIVISION, CHAMPION INTERNATIONAL CORPORATION

a New York corporation, hereinafter called "Industry", whose billing address for the purpose  
of this agreement is Drawer D, Missoula, Montana 59801

Location

WHEREAS, Industry desires the construction, maintenance and operation of trackage hereinafter called  
"track" to be located at Schilling, Montana, shown colored solid and dashed blue,  
~~shown between the letters dashed orange and walkway colored green~~, on the plat hereto attached  
dated December 26, 1978, marked Exhibit "A", and by this reference made a part hereof.

NOW THEREFORE, the parties hereto agree to the construction, maintenance and operation of said track on  
the following terms and conditions:

Right of  
Way

Section 1. Industry shall first procure without expense to Railroad all necessary right of way and all  
necessary public authority and permission for the construction, maintenance and operation of the track.

Industry further agrees that said track shall be constructed, maintained and operated subject to all provisions  
of any such public authority or permission and, regardless of the fact that same may be granted to Railroad rather  
than to Industry, to assume any and all liability for and to indemnify, defend and save harmless Railroad from  
and against any and all loss, cost, damage, suit or expense in any manner arising or growing out of the compliance  
with or violation of the provisions of such public authority or permission.

If separation of the grade of said track and of any highway is ordered by public authority, the Industry shall  
indemnify Railroad against any expense in connection therewith or consent to the removal of the track.

Construction,  
Maintenance,  
Operation  
and  
Ownership

Section 2. (a) Industry, at its own expense, will perform or will arrange for all grading and provide necessary  
drainage for that portion of track which is located off Railroad property. ~~Grading and drainage work on Railroad  
property will be performed by Railroad/Industry at Industry's expense.~~

(b) Railroad will construct track from point of switch to point of clearance (14 feet from center  
to center of tracks) ~~between the letters~~ colored solid blue on Exhibit "A" for the agreed amount  
of \$ 17,109.00 and from point of clearance ~~to end between the letters~~ colored dashed orange and  
on Exhibit "A" for the agreed amount of \$ 4,150.00 all at expense of Industry. ~~Industry shall  
also pay to Railroad the agreed amount of \$ \_\_\_\_\_ for cost of grading and drainage work per-  
formed by Railroad.~~ Industry, before any construction is begun, shall pay to Railroad such agreed amounts. Industry  
will, at its expense, construct track colored dashed blue on Exhibit "A".

(c) Cost of construction of track from point of switch to point of clearance ~~between the letters~~  
colored solid blue on Exhibit "A", paid for by Industry in the first instance in the amount of  
\$ 17,109.00 is subject to refund by Railroad to Industry or any assignee of Industry at the rate of  
\$ 20.00 for each car of freight delivered on or shipped from track on which Railroad receives  
road-haul revenue in excess of \$150.00 during the period of five (5) years after the date of completion of track,  
unless the total of such refund payments shall sooner equal said amount. Industry or its assignee shall submit a  
list of such cars to Railroad's Director A.F.E. Accounting, 176 East Fifth Street, Saint Paul, Minnesota 55101,  
upon each six (6) month anniversary of this agreement, and a settlement shall be made promptly after verification  
of such lists by said Director. Such lists shall show car numbers, waybill numbers and dates, points of origin and  
destination.

(d) Railroad will maintain track ~~between the letters~~ colored solid blue  
on Exhibit "A" at its expense and will maintain track ~~between the letters~~ colored dashed orange  
on Exhibit "A" at expense of Industry.

Industry will, at its own expense, maintain track ~~between the letters~~ colored dashed blue  
on Exhibit "A".

(e) Railroad will own the track ~~between the letters~~ colored solid blue  
on Exhibit "A" and Industry will own the track ~~between the letters~~ colored dashed orange and dashed blue  
on Exhibit "A".

Industry shall bear and pay any costs for changes or alterations in that portion of track owned by Industry  
that may be necessary in order to conform to any changes of grade or relocation of the tracks of Railroad at the  
point of connection with said track required by any law, ordinance or regulation, or necessary because of any  
other reason beyond Railroad's control.

Industry shall pay to Railroad from time to time the cost of maintenance, additions and betterments,  
performed by Railroad, herein agreed to be borne by Industry, within twenty (20) days after bills are rendered  
therefor.

Any work performed by Industry in constructing or maintaining the track or any facilities extending over,  
under or across the same or in making additions and betterments thereto shall be done in a substantial and  
workmanlike manner and in accordance with Railroad's standards. Wire lines shall be constructed and maintained  
in accordance with Railroad's requirements, the National Electric Safety Code and any statute, order, rule or  
regulation of any public authority having jurisdiction. If Industry fails to maintain said facilities or that portion  
of the track herein agreed by it to be maintained or to pay the bills therefor within the prescribed time, Railroad  
may refuse to operate over the track.

If said track is used for the receiving, forwarding or storing of hazardous commodities, Industry agrees to  
comply with Railroad's requirements and the requirements of any statute, order, rule or regulation of any public  
authority having jurisdiction with respect thereto as the same may be modified, supplemented and amended from  
time to time.

Definition  
of Cost  
Right of  
Railroad to  
Use

Section 3. "Cost" for the purpose of this agreement shall be actual labor and material costs including all  
assignable additives. Material and supplies shall be charged at current value where used.

Section 4. Railroad shall have the right to use and extend said track and construct spur tracks therefrom for  
the accommodation of the business of Railroad or the business of other parties, provided such use or extension  
does not unduly interfere with the use of said track by Industry.

Approved as to form  
Asst. Gen. Counsel  
Law Dept. B.N.I.

**Clearances**

Section 5. Industry shall not place, or permit to be placed, or to remain, any material, structure, pole or other obstruction within 8-1/2 feet laterally of the center or within 23 feet vertically from the top of the rail of said track; provided that if by statute or order of competent public authority greater clearances shall be required than those provided for in this Section 5, then Industry shall strictly comply with such statute or order. However, vertical or lateral clearances which are less than those hereinbefore required to be observed but are in compliance with statutory requirements will not be or be deemed to be a violation of this Section. Industry agrees to indemnify Railroad and save it harmless from and against any and all claims, demands, expenses, costs and judgments arising or growing out of loss of or damage to property or injury to or death of persons occurring directly or indirectly by reason of any breach of the foregoing or any other covenant contained in this agreement.

Should either, or both, the lateral and vertical clearances hereinbefore required to be observed be permitted to be reduced by order of competent public authority, Industry hereby agrees to strictly comply with the terms of any such order and indemnify and hold harmless Railroad from and against any and all claims, demands, expenses, costs and judgments arising or growing out of loss of or damage to property or injury to or death of persons occurring directly or indirectly by reason of or as a result of any such reduced clearance.

Railroad's operations over the track with knowledge of an unauthorized reduced clearance shall not be or be deemed to be a waiver of the foregoing covenants of Industry contained in this Section 5 or of Railroad's right to recover for such damages to property or injury to or death of persons that may result therefrom.

**Public  
Assessments  
Liability**

Section 6. Industry shall pay all compensation and assessments required at any time by a municipality, public authority, corporation or person for the privilege of constructing, maintaining and operating said track.

Section 7. Industry agrees to indemnify and hold harmless Railroad for loss, damage, injury or death from any act or omission of Industry, its employees, or agents, to the person or property of the parties hereto and their employees, and to the person or property of any other person or corporation, while on or near said track, and if any claim or liability shall arise from the joint or concurring negligence of both parties hereto it shall be borne by them equally.

In the event Industry permits a party or parties, hereinafter called "Permittee", other than Railroad to use said track for receiving, forwarding or storing shipments, Railroad hereby consents to such use, and in such case Industry hereby agrees to indemnify and hold harmless Railroad from and against any and all loss, damage, injury or death, resulting from or arising out of any act or omission of Permittee, its employees or agents, to the person or property of the parties hereto and said Permittee, and to the person or property of any other person or corporation while on or near said track.

**Assignment**

Section 8. This agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto; however, Industry shall not assign this agreement without the written consent of Railroad, and for any departure in this respect Railroad may terminate this agreement.

**Right to  
Disconnect  
Track**

Section 9. Railroad shall be privileged to terminate this agreement and discontinue the maintenance and operation of said track, and to remove its turnout connection, in the event of any of the following contingencies, viz.:

(a) Industry ceases for a continuous period of one (1) year the doing of business in an active and substantial way at the industry or establishment served.

(b) Railroad is authorized by competent public authority to abandon its line to which track is connected.

(c) Industry shall fail to keep and perform any obligation or stipulation stated in or resulting under this agreement.

No recourse or claim will exist in favor of or be asserted by Industry because of the discontinuance of operation and removal of the metal and fastenings as provided in this Section of this agreement.

**Removal of  
Track**


Section 10. Railroad agrees, upon discontinuance of the use of the track, to remove from its right of way that part of the track owned by Industry and to pay to Industry the salvage value of the usable material so removed, less cost of recovering it. If the cost of removing or recovering said track exceeds the salvage value thereof, Industry shall pay Railroad the difference.

**Joint use  
by Other  
Railroads**

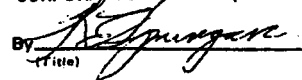
Section 11. This agreement is also made for the benefit of such other railroads which, either by prior understandings or agreements with the Railroad have the right to use the track, or which shall be admitted in the future to the use of the track by Railroad, all of which railroads shall be deemed the "Railroad" within the meaning hereof.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed the day and year first above written.

BURLINGTON NORTHERN INC.

  
Vice President

HOERNER WALDORF DIVISION, CHAMPION INTERNATIONAL  
CORPORATION

By   
(Title) Vice President







# NORTHERN PACIFIC RAILWAY COMPANY

## INDUSTRIAL TRACK AGREEMENT

AGREEMENT between the NORTHERN PACIFIC RAILWAY COMPANY, hereinafter called the "Railroad," and HOERNER WALDORF CORPORATION OF MONTANA, a Montana corporation hereinafter called the "Industry."

Parties.

Joint Use by  
Other  
Railroads

Location.

The Industry desires the construction, maintenance and operation of two spur tracks to be located at Schilling, Montana, shown colored RED between the letters A and B, designated Spur No. 1, and between the letters C and D, designated Spur No. 2, on the map marked Exhibit "A" attached hereto and made a part hereof; and the Railroad agrees to construct, maintain and operate said Spur No. 1 and said Spur No. 2, hereinafter referred to collectively as "track" on the following terms and conditions:

Right of Way.

Section 1. The Industry shall first procure and furnish without expense to the Railroad all necessary right of way, including all necessary public authority and permission for the construction, maintenance, and operation of the track.

The Industry further agrees that said track shall be constructed, maintained and operated subject to all provisions of any such public authority or permission and, regardless of the fact that the same may be granted to the Railroad rather than to the Industry, to assume any, and all liability for and to indemnify, defend and save harmless the Railroad from and against any and all loss, cost, damage, suit or expense in any manner arising or growing out of compliance with or violation of the provisions of such public authority or permission.

Section 2.

Construction,  
Ownership, and  
Maintenance.

Section 2. The Railroad, for the agreed sum of \$19,330.00, payable by the Industry on or before the execution of this agreement, shall construct said track, and shall furnish crushed rock ballast for the area shown outlined by GREEN line on said Exhibit "A".

The Industry shall own and shall bear and pay the entire cost and expense of maintenance of said track and at its expense shall pave the area outlined by GREEN line on said Exhibit "A".

Should the Industry do any work of construction, maintenance, or of additions and betterments, it shall do such work in substantial and workmanlike manner, and in accordance with the Railroad's standards.

The Industry shall pay to the Railroad from time to time the cost of the maintenance, additions and betterments done by the Railroad, herein agreed to be borne by the Industry, within twenty (20) days after bills are rendered therefor.

Definition  
of Cost.

Section 3. For the purpose of this agreement, "cost," shall be all assignable costs, plus ten percent to cover elements of expense not capable of exact ascertainment, plus three percent of the salaries and wages paid employees of the Railroad engaged in the performance of maintenance or addition and betterment work performed by the Railroad upon the request of the Industry for insurance coverage. Material shall be charged at its current value where used.

Right of  
Railroad  
to use.

Section 4. The Railroad shall have the right to use or to extend the track for the accommodation of the business of the Railroad or the business of other parties, provided such use or extension does not unduly interfere with the use of said track by the Industry. In case the track is regularly used by or is extended for the accommodation of another industry, it is agreed that the Railroad may fix the terms upon which such new industry shall share in the cost of construction and maintenance of the track used in common.

Clearances.

Section 5. Except as herein otherwise provided, the Industry will not place or permit to be placed, or to remain, any material, structure, pole or other obstruction within eight and one-half (8 1/2) feet laterally of the center, or within twenty-three (23) feet vertically from the top of the rail, of said track.

The Industry agrees that no building erected on the premises adjacent to said track shall have a swinging door or window opening toward said track which, when open, will restrict the clearance to less than eight and one-half (8 1/2) feet from the center line of said track.

The Industry agrees that all wires of whatsoever kind or nature adjacent to or crossing over or under the track shall be constructed and maintained in accordance with the National Electric Safety Code and laws of the State of Montana and in accordance with plans submitted by the Industry and approved by the Railroad.

The industry agrees to indemnify and save harmless the Railroad from all loss, damages, penalties, costs or judgments that may be assessed against or recovered from it on account of or in any manner growing out of a violation of this Section 5.

Public Assessments.

Section 6. The Industry shall pay all compensation and assessments required at any time by a municipality, public authority, corporation or person for the privilege of constructing, maintaining, and operating said track.

Transportation of Freight.

~~Section 7. All freight to or from the Industry located upon or reached by said track, shall be delivered to and transported by the Railroad over its line or lines of railway if its rate of transportation is as low as the rate over competing railway lines.~~

Liability.

Section 8. It is understood that the movement of railroad locomotives involves some risk of fire, and the Industry assumes all responsibility for and agrees to indemnify the Railroad against loss or damage to property of the Industry or to property upon its premises, regardless of Railroad negligence, arising from fire caused by locomotives operated by the Railroad on said track, or in its vicinity for the purpose of serving said Industry, except to the premises of the Railroad and to rolling stock belonging to the Railroad or to others, and to shipments in the course of transportation.

The Industry also agrees to indemnify and hold harmless the Railroad for loss, damage, or injury from any act or omission of the Industry, its employees, or agents, to the person or property of the parties hereto and their employees, and to the person or property of any other person or corporation, while on or near said track, and if any claim or liability other than from fire shall arise from the joint or concurring negligence of both parties hereto it shall be borne by them equally.

Assignment.

Section 9. The Industry shall not assign this agreement or any interest therein without the written consent of the Railroad.

Right to Disconnect Track.

Section 10. The Railroad shall be privileged to discontinue the maintenance and operation of said track, and to remove its turnout connection, in the event of any of the following contingencies, viz.:

(a) The Industry ceases for a continuous period of one year the doing of business in an active and substantial way at the industry or establishment served.

~~(b) The Railroad determines that the amount of business done upon such tracks be insufficient to justify the continued operation of the same by the Railroad~~

(c) The Industry shall fail to keep and perform any obligation or stipulation stated in or resulting under this contract.

(d) The Railroad shall find it necessary or desirable, or be required by law or ordinance or police regulation, or by changed conditions, to elevate or depress or otherwise alter its tracks at or near the point of connection with said Industry track so as to make it impracticable in the judgment of the management of said Railroad to continue said operation; provided, however, that if such change or changes do not render it impracticable in the judgment of said management of said Railroad, for the convenient operation of its railroad, the Industry shall continue to have similar track connection consistent with the change or changes made by the Railroad.

(e) Whenever any other carrier shall be permitted, without the consent of the Railroad, to operate on said track

(f) If the Industry fails to maintain said spur track in reasonably safe condition.

~~No recourse or claim will exist in favor of or be asserted by the Industry because of the discontinuance of operation and removal of the metal and fastenings as provided in this section of this agreement.~~

Section 11. The Railroad agrees, upon discontinuance of the use of the track, to remove from its right of way that part of the track originally paid for by the Industry and to pay to the Industry the salvage value of the usable material so removed, less cost of recovering it.

Dated March 12, 1958

NORTHERN PACIFIC RAILWAY COMPANY

By C. L. Bunker

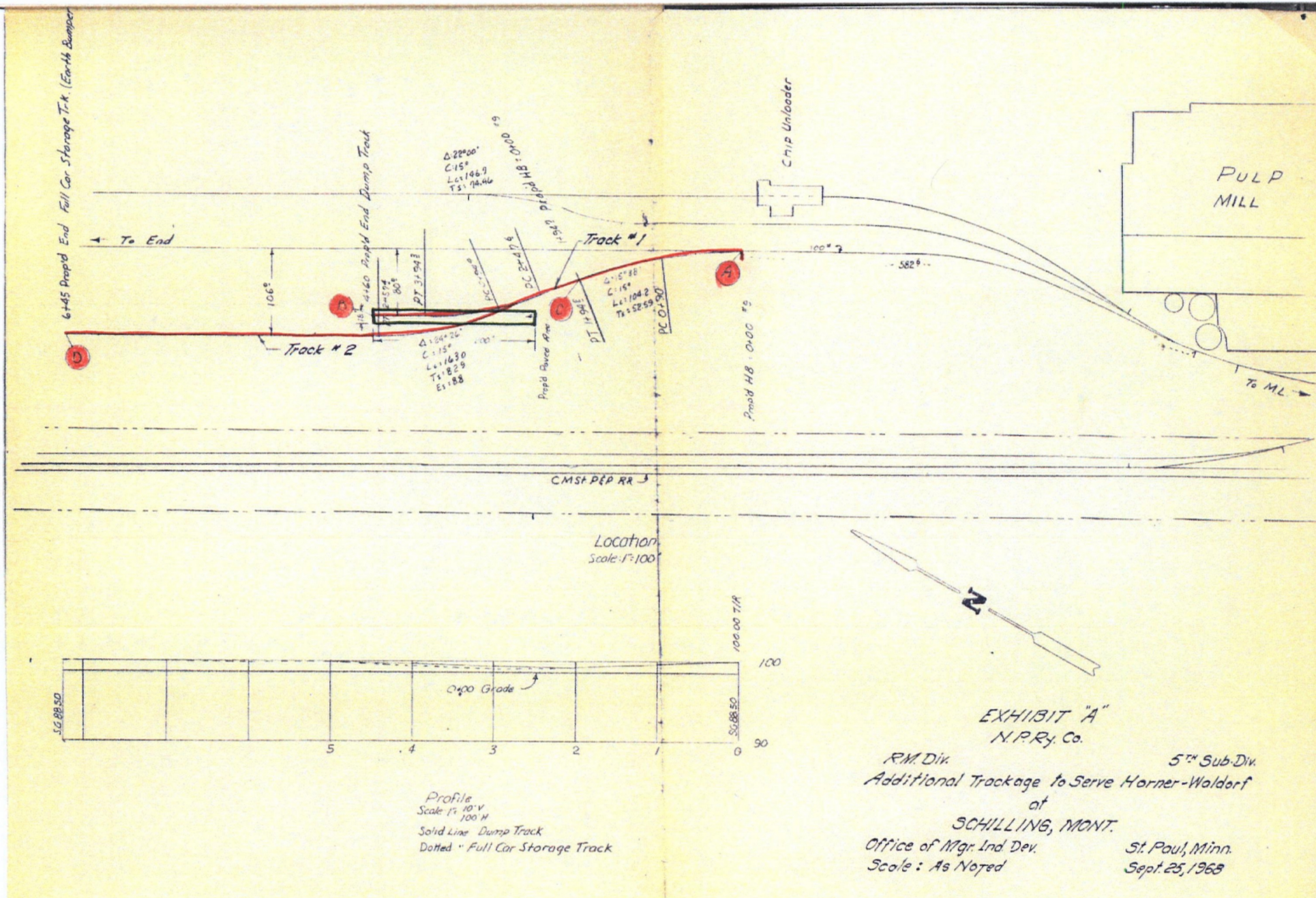
Vice President

HOERNER WALDORF CORPORATION OF MONTANA

By Ray C. Crenshaw

Title: Vice President





# BURLINGTON NORTHERN INC.

## INDUSTRIAL TRACK AGREEMENT

OFFICE OF SECRETARY

ST. PAUL, MINNESOTA

Parties

AGREEMENT, made this 3rd day of April, 19 79

between BURLINGTON NORTHERN INC., a Delaware corporation, hereinafter called "Railroad", and HOERNER WALDORF DIVISION, CHAMPION INTERNATIONAL CORPORATION

a New York corporation, hereinafter called "Industry", whose billing address for the purpose of this agreement is Drawer D, Missoula, Montana 59801

Location

WHEREAS, Industry desires the construction, maintenance and operation of trackage hereinafter called "track" to be located at Schilling, Montana, shown colored solid and dashed blue ~~shown between the letters dashed orange and walkway colored green~~, on the plat hereto attached dated December 26, 1978, marked Exhibit "A", and by this reference made a part hereof.

NOW THEREFORE, the parties hereto agree to the construction, maintenance and operation of said track on the following terms and conditions:

Right of Way

Section 1. Industry shall first procure without expense to Railroad all necessary right of way and all necessary public authority and permission for the construction, maintenance and operation of the track.

Industry further agrees that said track shall be constructed, maintained and operated subject to all provisions of any such public authority or permission and, regardless of the fact that same may be granted to Railroad rather than to Industry, to assume any and all liability for and to indemnify, defend and save harmless Railroad from and against any and all loss, cost, damage, suit or expense in any manner arising or growing out of the compliance with or violation of the provisions of such public authority or permission.

If separation of the grade of said track and of any highway is ordered by public authority, the Industry shall indemnify Railroad against any expense in connection therewith or consent to the removal of the track.

Construction, Maintenance, Operation and Ownership

Section 2. (a) Industry, at its own expense, will perform or will arrange for all grading and provide necessary drainage for that portion of track which is located off Railroad property. ~~Grading and drainage work on Railroad property will be performed by Railroad/Industry at Industry's expense.~~

(b) Railroad will construct track from point of switch to point of clearance (14 feet from center to center of tracks) ~~between the letters~~ colored solid blue on Exhibit "A" for the agreed amount of \$ 17,109.00 and from point of clearance ~~to and between the letters~~ right of way colored dashed orange and on Exhibit "A" for the agreed amount of \$ 4,150.00 all at expense of Industry. ~~Industry shall also pay to Railroad the agreed amount of \$ for cost of grading and drainage work performed by Railroad.~~ Industry, before any construction is begun, shall pay to Railroad such agreed amounts. Industry will, at its expense, construct track colored dashed blue on Exhibit "A".

(c) Cost of construction of track from point of switch to point of clearance ~~between the letters~~ colored solid blue on Exhibit "A", paid for by Industry in the first instance in the amount of \$ 17,109.00 is subject to refund by Railroad to Industry or any assignee of Industry at the rate of \$ 20.00 for each car of freight delivered on or shipped from track on which Railroad receives road-haul revenue in excess of \$150.00 during the period of five (5) years after the date of completion of track, unless the total of such refund payments shall sooner equal said amount. Industry or its assignee shall submit a list of such cars to Railroad's Director A.F.E. Accounting, 176 East Fifth Street, Saint Paul, Minnesota 55101, upon each six (6) month anniversary of this agreement, and a settlement shall be made promptly after verification of such lists by said Director. Such lists shall show car numbers, waybill numbers and dates, points of origin and destination.

approved as to form  
Asst. Gen. Counsel  
Law Dept. B.N.I.

(d) Railroad will maintain track ~~between the letters~~ colored solid blue on Exhibit "A" at its expense and will maintain track ~~between the letters~~ colored dashed orange on Exhibit "A" at expense of Industry.

Industry will, at its own expense, maintain track ~~between the letters~~ colored dashed blue on Exhibit "A".

(e) Railroad will own the track ~~between the letters~~ colored solid blue on Exhibit "A" and Industry will own the track ~~between the letters~~ colored dashed orange and dashed blue on Exhibit "A".

Industry shall bear and pay any costs for changes or alterations in that portion of track owned by Industry that may be necessary in order to conform to any changes of grade or relocation of the tracks of Railroad at the point of connection with said track required by any law, ordinance or regulation, or necessary because of any other reason beyond Railroad's control.

Industry shall pay to Railroad from time to time the cost of maintenance, additions and betterments, performed by Railroad, herein agreed to be borne by Industry, within twenty (20) days after bills are rendered therefor.

Any work performed by Industry in constructing or maintaining the track or any facilities extending over, under or across the same or in making additions and betterments thereto shall be done in a substantial and workmanlike manner and in accordance with Railroad's standards. Wire lines shall be constructed and maintained in accordance with Railroad's requirements, the National Electric Safety Code and any statute, order, rule or regulation of any public authority having jurisdiction. If Industry fails to maintain said facilities or that portion of the track herein agreed by it to be maintained or to pay the bills therefor within the prescribed time, Railroad may refuse to operate over the track.

If said track is used for the receiving, forwarding or storing of hazardous commodities, Industry agrees to comply with Railroad's requirements and the requirements of any statute, order, rule or regulation of any public authority having jurisdiction with respect thereto as the same may be modified, supplemented and amended from time to time.

Definition of Cost  
Right of Railroad to Use

Section 3. "Cost" for the purpose of this agreement shall be actual labor and material costs including all assignable additives. Material and supplies shall be charged at current value where used.

Section 4. Railroad shall have the right to use and extend said track and construct spur tracks therefrom for the accommodation of the business of Railroad or the business of other parties, provided such use or extension does not unduly interfere with the use of said track by Industry.

**Clearances**

Section 5. Industry shall not place, or permit to be placed, or to remain, any material, structure, pole or other obstruction within 8-1/2 feet laterally of the center or within 23 feet vertically from the top of the rail of said track; provided that if by statute or order of competent public authority greater clearances shall be required than those provided for in this Section 5, then Industry shall strictly comply with such statute or order. However, vertical or lateral clearances which are less than those hereinbefore required to be observed but are in compliance with statutory requirements will not be or be deemed to be a violation of this Section. Industry agrees to indemnify Railroad and save it harmless from and against any and all claims, demands, expenses, costs and judgments arising or growing out of loss of or damage to property or injury to or death of persons occurring directly or indirectly by reason of any breach of the foregoing or any other covenant contained in this agreement.

Should either, or both, the lateral and vertical clearances hereinbefore required to be observed be permitted to be reduced by order of competent public authority, Industry hereby agrees to strictly comply with the terms of any such order and indemnify and hold harmless Railroad from and against any and all claims, demands, expenses, costs and judgments arising or growing out of loss of or damage to property or injury to or death of persons occurring directly or indirectly by reason of or as a result of any such reduced clearance.

Railroad's operations over the track with knowledge of an unauthorized reduced clearance shall not be or be deemed to be a waiver of the foregoing covenants of Industry contained in this Section 5 or of Railroad's right to recover for such damages to property or injury to or death of persons that may result therefrom.

**Public  
Assessments  
Liability**

Section 6. Industry shall pay all compensation and assessments required at any time by a municipality, public authority, corporation or person for the privilege of constructing, maintaining and operating said track.

Section 7. Industry agrees to indemnify and hold harmless Railroad for loss, damage, injury or death from any act or omission of Industry, its employees, or agents, to the person or property of the parties hereto and their employees, costs and judgments arising or growing out of loss of or damage to property or injury to or death of persons occurring directly or indirectly by reason of any breach of the foregoing or any other covenant contained in this agreement.

In the event Industry permits a party or parties, hereinafter called "Permittee", other than Railroad to use said track for receiving, forwarding or storing shipments, Railroad hereby consents to such use, and in such case Industry hereby agrees to indemnify and hold harmless Railroad from and against any and all loss, damage, injury or death, resulting from or arising out of any act or omission of Permittee, its employees or agents, to the person or property of the parties hereto and said Permittee, and to the person or property of any other person or corporation while on or near said track.

**Assignment**

Section 8. This agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto; however, Industry shall not assign this agreement without the written consent of Railroad, and for any departure in this respect Railroad may terminate this agreement.

**Right to  
Disconnect  
Track**

Section 9. Railroad shall be privileged to terminate this agreement and discontinue the maintenance and operation of said track, and to remove its turnout connection, in the event of any of the following contingencies, viz.:

(a) Industry ceases for a continuous period of one (1) year the doing of business in an active and substantial way at the industry or establishment served.

(b) Railroad is authorized by competent public authority to abandon its line to which track is connected.

(c) Industry shall fail to keep and perform any obligation or stipulation stated in or resulting under this agreement.

No recourse or claim will exist in favor of or be asserted by Industry because of the discontinuance of operation and removal of the metal and fastenings as provided in this Section of this agreement.

**Removal of  
Track**

Section 10. Railroad agrees, upon discontinuance of the use of the track, to remove from its right of way that part of the track owned by Industry and to pay to Industry the salvage value of the usable material so removed, less cost of recovering it. If the cost of removing or recovering said track exceeds the salvage value thereof, Industry shall pay Railroad the difference.

**Joint use  
by Other  
Railroads**

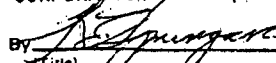
Section 11. This agreement is also made for the benefit of such other railroads which, either by prior understandings or agreements with the Railroad have the right to use the track, or which shall be admitted in the future to the use of the track by Railroad, all of which railroads shall be deemed the "Railroad" within the meaning hereof.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed the day and year first above written.

**BURLINGTON NORTHERN INC.**

  
Vice President

**HOERNER WALDORF DIVISION, CHAMPION INTERNATIONAL CORPORATION**

  
Vice President



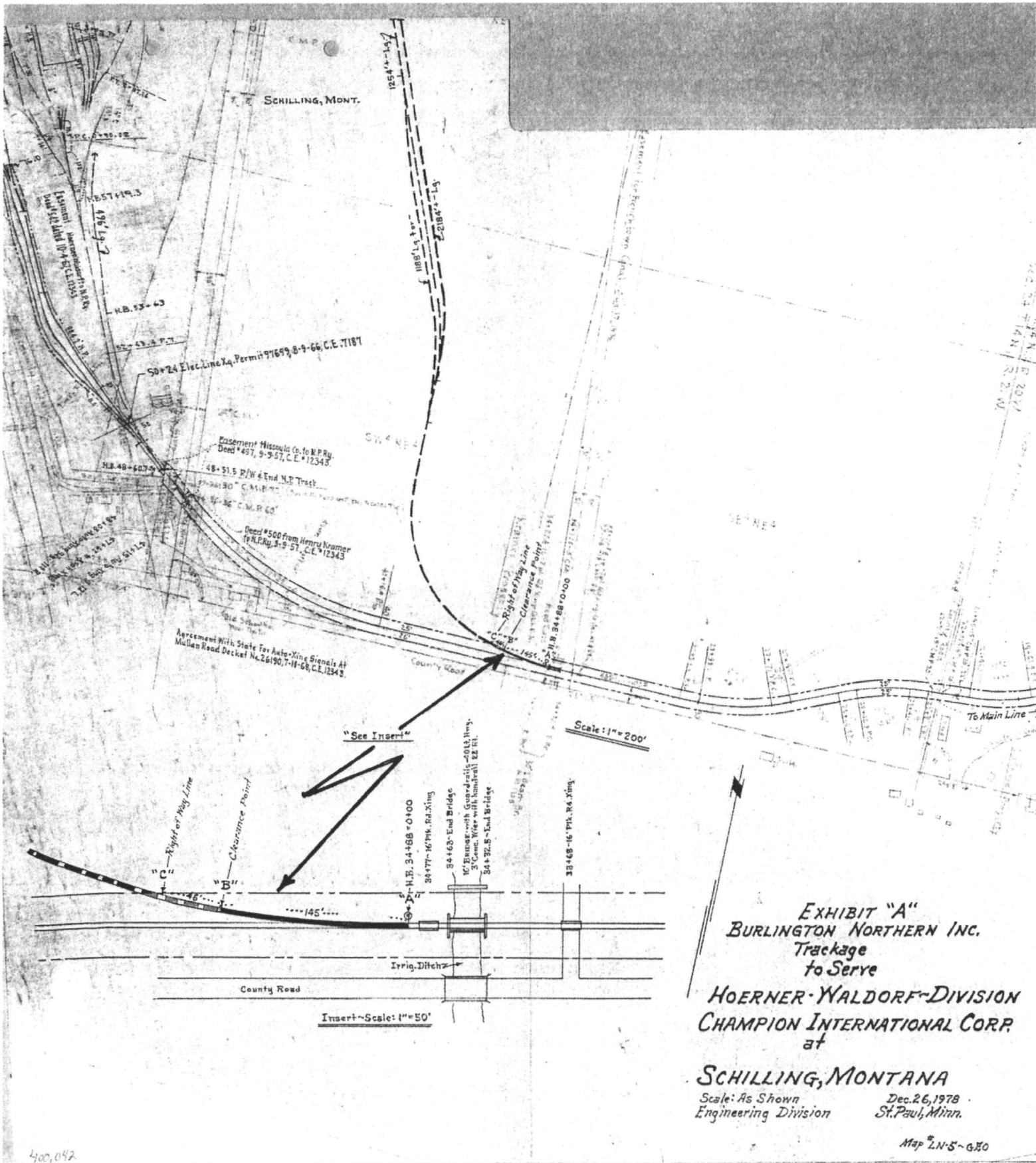


EXHIBIT "A"  
 BURLINGTON NORTHERN INC.  
 Trackage  
 to Serve  
 HOERNER-WALDORF-DIVISION  
 CHAMPION INTERNATIONAL CORP.  
 at  
 SCHILLING, MONTANA  
 Scale: As Shown  
 Engineering Division  
 Dec. 26, 1978  
 St. Paul, Minn.

Map 2N-5-G-30